

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT R. BAREFOOT and DEONNA  
ENTERPRISES, INC.

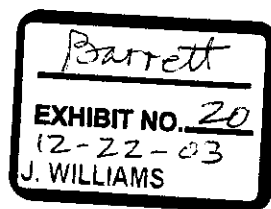
Plaintiffs

v.

KING MEDIA, INC.  
TRIAD MARKETING

Defendants

Civil Action No. 02-9526



AFFIDAVIT OF DONALD BARRETT, JR.

I, Donald Barrett, Jr., state and declare as follows:

1. I have personal knowledge of the facts stated herein, and if called as a witness, would testify competently hereto.

2. I am one of two shareholders of Direct Marketing Concepts, Inc. ("DMC").

3. DMC is a Massachusetts corporation. Its principal place of business is at 900 Cummings Center, Beverly, Massachusetts. DMC is in the business of marketing products through the distribution of infomercials.

"The Closer Look" Infomercial

4. I hired Kevin Trudeau ("Trudeau") and Robert Barefoot ("Barefoot") to appear in an infomercial on the subject of coral calcium, a nutritional dietary supplement.

5. On or about December 20, 2001, "The Closer Look" infomercial was taped.

6. In the infomercial, Trudeau interviews Barefoot on the benefits of coral calcium, a nutritional dietary supplement. Barefoot is introduced as a "scientist" and author of two books, *The Calcium Factor* and *Diet by Diet*.

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Jason Birch

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7. In the infomercial, consumers are directed to call a 1-800 number to seek more information on coral calcium and Barefoot's books.

8. In early January 2002, "The Closer Look Show" began to air.

9. DMC hired various employees to receive telephone calls from interested viewers. When viewers called, DMC would offer the books *Death by Diet* and *The Calcium Factor* and also inquire whether the customer was interested in purchasing the coral calcium product.

10. DMC sells a product labeled Coral Calcium Daily to its customers and will sell, or oftentimes give away as a promotion, a copy of Barefoot's books.

DMC's Agreements with King Media, Inc. ("King Media") and Triad ML Marketing, Inc. ("Triad")

11. DMC entered into an agreement with King Media wherein King Media purchased media time for the airing of "The Closer Look" infomercial. King Media has no involvement in the sale of coral calcium or Barefoot's books.

12. DMC also entered into an agreement with Triad for the purpose of processing customer orders of coral calcium product and Barefoot's books. As part of DMC's agreement with Triad, Triad entered into contracts with vendors who would print Barefoot's books.

DMC's Agreement with Barefoot and Deonna Enterprises

13. On February 18, 2002, Barefoot drafted an agreement titled "Distribution Agreement" and sent it to me for my signature. I made some changes to the agreement and sent it back to Barefoot. Barefoot signed the agreement and sent me a fully executed copy of the Distribution Agreement. (A copy of the Distribution Agreement is attached hereto as Exhibit 1.)

14. At no time, prior to the commencement of litigation did Barefoot ever tell me that our agreement was invalid.

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15. After realizing the success of "The Closer Look" infomercial both Trudeau and Barefoot attempted to renegotiate their respective contracts.

#### Dispute with Trudeau

16. Initially, DMC used Trudeau's company, Shop America USA, to fulfill customer orders, i.e., ship out the coral calcium product to customers. Because of Trudeau's control of Shop America USA, Trudeau became aware of the amount of sales generated by "The Closer Look Show." Trudeau learned that sales were substantial. Consequently, Trudeau sought to obtain additional compensation from DMC.

17. Trudeau demanded that he receive 5% of the gross sales arising from the infomercial as opposed to the agreed-upon 5% of the net sales. Trudeau further demanded that he be allowed to "run the show" himself. "Running the show" meant that Trudeau would air the infomercial with Trudeau/Shop America's 1-800 number in place of DMC's 1-800 number and fulfill (and naturally profit from) the customer orders received as a result of the airing of the infomercial.

18. I refused Mr. Trudeau's demands for additional compensation. Additionally, I refused to allow Trudeau to "run the show" himself because Trudeau would not agree to sign DMC's distributorship agreement which would prevent multiple distributors from competing on the same television stations in the same geographic markets.

#### Dispute with Barefoot

19. Initially, pursuant to DMC's contract with Triad, Triad purchased the coral calcium product from Barefoot. Barefoot labeled the product "Coral Calcium Supreme." From January 15, 2002, to March 1, 2002, Triad paid Barefoot \$ 89,365.60 for the coral calcium product. This amount included Barefoot's royalties.

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20. On February 26, 2002, Barefoot sent a document which he titled "Letter of Understanding" to Triad. In this "Letter of Understanding," Barefoot stated the following:

Please be advised that the attached contract between Direct Marketing Concept Inc. and Deonna Enterprises, Inc. signed February 18, 2002 authorizes the following royalties to Deonna Enterprises (Robert Barefoot): . . . Donald Barrett was under the understanding that the royalties had already been paid. This is not the case and I therefore ask you to expedite the payment.

(A copy of the February 26, 2002, correspondence is attached hereto as Exhibit 2).

21. At or about late February 2002, DMC and Triad discovered that Barefoot was taking a kick back from the manufacturer of the coral calcium, i.e., Barefoot demanded royalties from the manufacturer at the same time that DMC was paying Barefoot \$1.00/bottle in royalties.

22. DMC refused to pay Barefoot more than the agreed-upon \$1.00/bottle in royalties pursuant to the terms of the Barefoot/DMC Distribution Agreement.

23. Additionally, DMC learned that there were labeling and other deficiencies in Barefoot's "Coral Calcium Supreme" product.

**Confusion Created by "The Debbie & Kevin" Infomercial**

24. In mid-September, 2002, DMC learned that Trudeau and Barefoot had begun airing an infomercial titled, "The Debbie & Kevin Show."

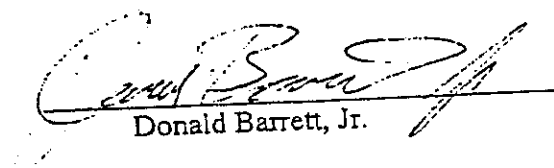
25. In early November 2002, DMC and its distributors started receiving an unusual amount of phone calls from customers expressing their confusion over the two infomercials, "The Closer Look" and "The Debbie & Kevin Show."

26. Numerous customers have expressed frustration over the similarity of the infomercials and the resulting confusion over the source of the coral calcium product.

27. Consequently, DMC filed a lawsuit in Chicago against Barefoot and Trudeau for unfair competition.

I declare under penalty of perjury that the foregoing is true and correct and, if called as a witness,  
I could and would testify truthfully thereto.

Executed this 21st day of February 2003 in Beverly, Massachusetts.

  
Donald Barrett, Jr.